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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,558	12/12/2003	Aseem Agrawal	JP920030181US1	3924

7590 04/13/2009
Frederick W. Gibb, III
McGinn & Gibb, PLLC
Suite 304
2568-A Riva Road
Annapolis, MD 21401

EXAMINER

PRESTON, JOHN O

ART UNIT	PAPER NUMBER
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3691

MAIL DATE	DELIVERY MODE
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04/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/735,558	Applicant(s) AGRAWAL, ASEEM	
	Examiner JOHN O. PRESTON	Art Unit 3691	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,7,14,20,27 and 31.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art Unit 3691

/John O Preston/
Examiner, Art Unit 3691

Continuation of 5. Applicant's reply has overcome the following rejection(s): 35 USC 101: rejection based on a claim being directed to non-statutory subject matter. The amendment will be entered and the 35 USC 101 rejection of the claims is withdrawn.

Continuation of 7. Explanation of how the new or amended claims would be rejected:

1) Applicant argues that Ostroff does not disclose, teach, or suggest the limitations of :

wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis. Examiner notes that Ostroff was used in combination with several other references to reject the pending claims, and Ostroff was not used to disclose, teach, or suggest any of the limitations above. Therefore, Applicant's argument that Ostroff does not teach the limitations above is moot.

2) Applicant argues that Asplen does not disclose, teach, or suggest the limitations of :

wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; conducting conjoint data analysis on said clusters to identify said product and positioning attributes from said shortlist associated with a product's success, wherein said conjoint data analysis on said clusters is incomplete due to inadequate competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis. Examiner notes that Asplen was used in combination with several other references to reject the pending claims, and Asplen was only used to suggest the limitation of wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales. Therefore, Applicant's assertion that Asplen does not disclose, teach, or suggest any other aforementioned limitation is moot.

Examiner maintains the assertion that Asplen suggests the limitation of wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales (See at least Asplen: col. 2, line 20 - col 4, line 15. Asplen discloses a method of inputting information pertaining to a business plan, opportunity assessment, product launch, and financial information including rates of return, profit margins, and revenue forecasts, which suggests the limitation of wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales.) For these reasons, Examiner finds Applicant's arguments nonpersuasive.

3) Applicant argues that Miller does not disclose, teach, or suggest wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; conducting conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis. Examiner notes that Miller was used in combination with several other references to reject the pending claims, and Miller was only used to suggest the limitation of wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective. Therefore, Applicant's assertion that Miller does not disclose, teach, or suggest any other aforementioned limitation is moot.

Examiner maintains the assertion that Miller suggests the limitation of wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective (See at least Miller: Figs. 3-5, 9; page 5, paragraph 59. Miller discloses an attribute map that displays clusters of a competitors' products with attributes similar to that of the client company.) Therefore, Examiner finds Applicant's arguments nonpersuasive.

4) Applicant argues that Harshaw does not disclose, teach, or suggests wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; conducting conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to

inadequate inputted competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis. Examiner notes that Harshaw was used in combination with several other references to reject the pending claims, and Harshaw was only used to suggest the limitation of conducting conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data.

Examiner maintains the assertion that Harshaw suggests the limitation of conducting conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data. (Harshaw: pg. 2, pgh 25; pg. 3, pgh 36. Harshaw discloses using conjoint analysis for selected attributes associated with a new product, which suggests using conjoint data analysis that is incomplete due to inadequate inputted competitors' data). Therefore, Examiner finds Applicant's arguments nonpersuasive.

5) Applicant argues that Stewart does not disclose, teach, or suggest wherein said merchant's data comprises product attributes and positioning attributes of said proposed new product, product attribute value ranges and positioning attribute value ranges of interest to said merchant, and a business objective, said business objective further comprising maximization of any of revenue, profit, and unit sales; wherein clusters of said competitors' products with similar product attributes from said shortlist are formed, said forming of clusters being based on values of said product and positioning attributes from said shortlist, and using a distance metric that factors in said business objective; conducting conjoint data analysis on the clusters, in which the conjoint data analysis on the clusters is incomplete due to inadequate inputted competitors' data; conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis. Examiner notes that Stewart was used in combination with several other references to reject the pending claims, and Stewart was only used to suggest the limitation of conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis.

Examiner maintains the assertion that Stewart suggests the limitation of conducting online market research to obtain further competitors' data sufficient to completely analyze said clusters by conjoint data analysis (See at least Stewart: pg. 1, pgh 8; page 4, paragraph 54. Stewart discloses a software application for conducting online market research.) Therefore, Examiner finds Applicant's arguments nonpersuasive.

For the reasons stated above, the pending claims would still be unpatentable over Ostroff, Asplen, Miller, Harshaw, and Stewart under 35 USC 103(a).